

**BECKER & POLIAKOFF LLP**

Helen Davis Chaitman  
Lance Gotthoffer  
Peter W. Smith  
Julie Gorchkova  
45 Broadway, 8th Floor  
New York, New York 10006  
(212) 599-3322  
HCHAITMAN@BPLEGAL.COM  
LGOTTHOFFER@BPLEGAL.COM  
PSMITH@BPLEGAL.COM  
JGORCHKOVA@BPLEGAL.COM

*Attorneys for Defendants Susanne Stone Marshall,  
Adele Fox, Marsha Peshkin, and Russell Oasis (the  
"Fox Plaintiffs")*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

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In re:

BERNARD L. MADOFF,

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff,

CAPITAL GROWTH COMPANY, *et als*,

Intervenors,

v.

SUSANNE STONE MARSHALL, *et als*,

Defendants.

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Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 14-01840 (SMB)

**STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL  
AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Pursuant to Federal Rule of Bankruptcy Procedure 8006, and in connection with the Notice of Appeal filed on July 14, 2014, Defendants Susanne Stone Marshall, Adele Fox, Marsha Peshkin, and Russell Oasis (the “Fox Plaintiffs”) [ECF Doc # 62], hereby designate the items to be included in the record on appeal and state the issues to be presented on appeal to the United States District Court for the Southern District of New York from the:

(1) Memorandum Decision of the United States Bankruptcy Court for the Southern District of New York (Hon. Stuart M. Bernstein) (the “Bankruptcy Court”) entered in the above-referenced proceeding on June 23, 2014 (ECF Doc # 50) (the “Decision”);

(2) Memorandum Endorsed Order of the Bankruptcy Court entered in the above-referenced proceeding on July 2, 2014 (ECF Doc # 55) (the “July 2 Memo. Order”); and

(3) Order of the Bankruptcy Court entered in the above-referenced proceeding on July 2, 2014 granting Plaintiff’s motion for an injunction and denying Defendants’ motion for a stay and cross-motion (ECF Doc # 56) (the “Injunction Order”).

**STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

1. Did the Bankruptcy Court exceed its jurisdiction and err as a matter of law in granting the Trustee's motion that it, rather than the Florida federal court, rule on the issue of whether the Fox Plaintiffs’ proposed second amended complaint (the “PSAC”)

states a non-derivative claim in view of the fact that the Second Circuit mandated that precise issue to be decided, in the first instance, by the Florida federal district court?

2. Did the Bankruptcy Court exceed its jurisdiction and err as a matter of law in enjoining the Fox Plaintiffs' prosecution of the PSAC in Florida when the court did not find that the PSAC was derivative but simply that the claims were insufficiently particularized?

3. Did the Bankruptcy Court err in holding that the PSAC does not state a claim against the Picower Defendants?

4. Did the Bankruptcy Court err in denying the Fox Plaintiffs' motion for a stay?

5. Did the Bankruptcy Court err in denying the Fox Plaintiffs' cross-motion to dismiss?

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>FILING DATE</b>	<b>ECF DOC #</b>	<b>DOCKET TEXT</b>
03/11/2014	1	Adversary case 14-01840. Complaint against Susanne Stone Marshall, Adele Fox, Marsha Peshkin, Russell Oasis (" <u>Fox Plaintiffs</u> "), A&G Goldman Partnership, Pamela Goldman (" <u>Goldman Plaintiffs</u> "). Nature(s) of Suit: (72 (Injunctive relief - other)) Filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC (" <u>Trustee</u> "). (Sheehan, David) (Filing Fee Charged to the Estate)Modified on 3/12/2014 (Acosta, Annya). (Entered: 03/11/2014)
03/11/2014	2	Statement /Notice of Application for Enforcement of Permanent Injunction and Automatic Stay filed by David J. Sheehan on behalf of the Trustee. (Attachments) (Sheehan, David) (Entered: 03/11/2014)

<b>FILING DATE</b>	<b>ECF DOC #</b>	<b>DOCKET TEXT</b>
03/11/2014	3	Motion for Preliminary Injunction /Memorandum of Law in Support of Trustee's Application for Enforcement of Permanent Injunction and Automatic Stay (related document(s)2) filed by David J. Sheehan on behalf of the Trustee. (Attachments) (Sheehan, David) (Entered: 03/11/2014)
03/11/2014	4	Declaration of Keith R. Murphy in Support of Trustee's Application for Enforcement of Permanent Injunction and Automatic Stay (related document(s)3) filed by David J. Sheehan on behalf of the Trustee. with hearing to be held on 5/7/2014 at 10:00 AM at Courtroom 723 (SMB) (Attachments) (Sheehan, David) (Entered: 03/11/2014)
03/11/2014	5	Affidavit of Matthew Cohen in Support of Trustee's Application for Enforcement of Permanent Injunction and Automatic Stay (related document(s)3) filed by David J. Sheehan on behalf of the Trustee. (Attachments) (Sheehan, David) (Entered: 03/11/2014)
03/14/2014	6	Summons with Notice of Pre-Trial Conference issued by Clerk's Office with Pre-Trial Conference set for 4/29/2014 at 10:00 AM at Courtroom 723 (SMB), Answer due by 4/14/2014, (Bickerstaff, Chris) (Entered: 03/14/2014)
04/17/2014	14	Motion for Stay Pending Appeal Notice of Motion for a Stay of the Proceeding and an Extension of Time Pursuant to Fed. Bankr. R. 9006 and Local Rule 9006-2 filed by Helen Chaitman on behalf of Fox Plaintiffs with hearing to be held on 5/1/2014 at 10:30 AM at Courtroom 723 (SMB) Responses due by 4/24/2014,. (Chaitman, Helen) (Entered: 04/17/2014)
04/17/2014	15	Motion to Stay Notice of Motion for a Stay of the Proceeding and an Extension of Time Pursuant to Fed. Bankr. R. 9006 and Local Rule 9006-2 filed by Helen Chaitman on behalf of Fox Plaintiffs with hearing to be held on 5/1/2014 at 10:30 AM at Courtroom 723 (SMB) Responses due by 4/24/2014,. (Chaitman, Helen) (Entered: 04/17/2014)

<b>FILING DATE</b>	<b>ECF DOC #</b>	<b>DOCKET TEXT</b>
04/17/2014	16	Memorandum of Law Memorandum of Law in support of Motion for a Stay of the Proceeding and an Extension of Time Pursuant to Fed. Bankr. R. 9006 and Local Rule 9006-2 (related document(s)15) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Chaitman, Helen) (Entered: 04/17/2014)
04/17/2014	17	Declaration of Helen Davis Chaitman in support of Motion for a Stay of the Proceeding and an Extension of Time Pursuant to Fed. Bankr. R. 9006 and Local Rule 9006-2 (related document(s)15) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Attachments) (Chaitman, Helen) (Entered: 04/17/2014)
04/18/2014	18	Letter to Judge Bernstein dated April 18, 2014 filed by Keith R. Murphy on behalf of the Trustee. (Murphy, Keith) (Entered: 04/18/2014)
04/18/2014	19	Memorandum Endorsed Order signed on 4/18/2014: The Court declines to reject the defendants stay motion out of hand. That said, the Court will not modify the existing scheduling order. Accordingly, the defendants ignore that order at their peril. If the Court denies the defendants motion for a stay, it will decide the trustee's application based on the timely filed pleadings (related document(s)18)(White, Greg) (Entered: 04/18/2014)
04/18/2014	20	Objection to Motion for Enforcement of Permanent Injunction and Automatic Stay (related document(s)3) filed by Frederick E. Schmidt on behalf of Goldman Plaintiffs. (Attachments) (Schmidt, Frederick) (Entered: 04/18/2014)
04/21/2014	21	Notice of Hearing on Cross-Motion to Dismiss Trustee's Complaint as to Fox Plaintiffs (related document(s)3) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Chaitman, Helen) (Entered: 04/21/2014)
04/21/2014	22	Memorandum Of Law (i) In Opposition To Trustees Motion For Enforcement Of Permanent Injunction & Automatic Stay And (ii) In Support Of Cross-Motion To Dismiss Complaint For Failure To State A Claim By Fox Plaintiffs (related document(s)3) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Chaitman, Helen) (Entered: 04/21/2014)

<b>FILING DATE</b>	<b>ECF DOC #</b>	<b>DOCKET TEXT</b>
04/21/2014	23	Declaration Of Helen Davis Chaitman (i) In Opposition To Trustees Motion For Enforcement Of Permanent Injunction & Automatic Stay And (ii) In Support Of Cross-Motion To Dismiss Complaint For Failure To State A Claim By Fox Plaintiffs (related document(s)3) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Attachments) (Chaitman, Helen) (Entered: 04/21/2014)
04/21/2014	24	Memorandum Endorsed Order Signed On 4/21/2014. Re: Granting Letter (Greene, Chantel) (Entered: 04/21/2014)
04/21/2014	25	Cross Motion to Dismiss Case Notice of Cross-Motion to Dismiss (related document(s)22, 23) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Chaitman, Helen) (Entered: 04/21/2014)
04/24/2014	28	Trustee's Memorandum of Law in Opposition to Motion to Stay (related document(s)14, 15) filed by David J. Sheehan on behalf of the Trustee. (Sheehan, David) (Entered: 04/24/2014)
04/24/2014	29	Declaration of Ferve E. Ozturk in Support of Trustee's Opposition to Motion for Stay (related document(s)28) filed by David J. Sheehan on behalf of the Trustee. (Attachments) (Sheehan, David) (Entered: 04/24/2014)
04/29/2014	31	Reply Memorandum of Law in Further Support of the Florida Plaintiffs' Motion for a Stay (related document(s)15) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Chaitman, Helen) (Entered: 04/29/2014)
05/01/2014	32	Trustee's Reply in Support of Application for Enforcement of Permanent Injunction and Automatic Stay (related document(s)3) filed by David J. Sheehan on behalf of the Trustee. (Sheehan, David) (Entered: 05/01/2014)

<b>FILING DATE</b>	<b>ECF DOC #</b>	<b>DOCKET TEXT</b>
05/06/2014	33	Motion to Intervene Pursuant to FRCP 24(b) filed by Marcy R. Harris on behalf of Barbara Picower, individually and as Executor of the Estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabriel H. Picower, The Trust F/B/O Gabrielle H. Picower, The Picower Institute of Medical Research, The Picower Foundation, Jeffrey M. Picower, P.C., Jeffrey M. Picower Special Company, JMP Limited Partnership, JLN Partnership, JFM Investment Companies, JF Partnership, JEMW Partnership, JAB Partnership, JA Special Limited Partnership, JA Primary Limited Partnership, Favorite Funds, Capital Growth Company, Decisions, Inc. ("Picower Defendants") with hearing to be held on 5/22/2014 (check with court for location) Responses due by 5/15/2014, (Harris, Marcy) (Entered: 05/06/2014)
05/06/2014	34	Memorandum of Law in support of Picower Defendants' motion to Intervene Pursuant to FRCP 24(b) (related document(s)33) filed by Marcy R. Harris on behalf of Picower Defendants. (Harris, Marcy) (Entered: 05/06/2014)
05/06/2014	36	Motion to Intervene Pursuant to FRCP 24(b) filed by Marcy R. Harris on behalf of Picower Defendants. (Attachments) (Harris, Marcy) (Entered: 05/06/2014)
05/06/2014	37	Memorandum of Law in support of Picower Parties' motion to Intervene Pursuant to FRCP 24(b) (related document(s)36) filed by Marcy R. Harris on behalf of Picower Defendants. (Attachments) (Harris, Marcy) (Entered: 05/06/2014)
05/08/2014	44	Transcript regarding Hearing Held on 5/7/2014 10:03AM RE: Motion for Preliminary Injunction/Memorandum of Law in Support of Trustees Application for Enforcement of Permanent Injunction and Automatic Stay; Motion to Dismiss Trustees Complaint as to Defendants Fox Plaintiffs. (Ortiz, Carmen) (Entered: 05/16/2014)

<b>FILING DATE</b>	<b>ECF Doc #</b>	<b>DOCKET TEXT</b>
05/05/2014	43	Transcript regarding Hearing Held on 5/1/2014 10:50AM RE: Defendants Motion for Stay of Proceeding and Extension of Time. Remote electronic access to the transcript is restricted until 8/4/2014. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: VERITEXT REPORTING COMPANY.]. (See the Courts Web-site for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 5/12/2014. Statement of Redaction Request Due By 5/27/2014. Redacted Transcript Submission Due By 6/5/2014. Transcript access will be restricted through 8/4/2014. (Ortiz, Carmen) (Entered: 05/16/2014)
05/15/2014	42	Answer to Complaint (Related Doc # 1) (related document(s)1) filed by Hanh V. Huynh on behalf of Goldman Plaintiffs. (Huynh, Hanh) (Entered: 05/15/2014)
05/22/2014	45	Order Signed On 5/22/2014 Re: Granting Motion to Intervene (Related Doc # 36) . (Greene, Chantel) (Entered: 05/22/2014)
05/27/2014	47	Intervenors Complaint Filed by Marcy R. Harris on behalf of Picower Defendants. (Attachments) (Harris, Marcy) (Entered: 05/27/2014)
05/27/2014	48	Corporate Ownership Statement filed by Marcy R. Harris on behalf of Picower Defendants. (Harris, Marcy) (Entered: 05/27/2014)
05/28/2014	49	Summons and Notice of Pre-Trial Conference against A&G Goldman Partnership Answer Due: 6/27/2014; Adele Fox Answer Due: 6/27/2014; Marsha Peshkin Answer Due: 6/27/2014; Pamela Goldman Answer Due: 6/27/2014; Russell Oasis Answer Due: 6/27/2014; Susanne Stone Marshall Answer Due: 6/27/2014. Pre-Trial Conference set for 7/30/2014 at 10:00 AM at Courtroom 723 (SMB), (Acosta, Annya) (Entered: 05/28/2014)
06/23/2014	50	Memorandum Decision signed on 6/23/2014 Granting Plaintiff's Motion for an Injunction and Denying Motion to Stay and Cross-Motion to Dismiss (Related Doc # 3,14,22) . (Rouzeau, Anatin) (Entered: 06/23/2014)



<b>FILING DATE</b>	<b>ECF DOC #</b>	<b>DOCKET TEXT</b>
06/25/2014	51	Notice of Settlement of an Order filed by Keith R. Murphy on behalf of the Trustee. (Attachments: # 1 Proposed Order)(Murphy, Keith) (Entered: 06/25/2014)
06/27/2014	52	Letter to Honorable Stuart M. Bernstein filed by Helen Chaitman on behalf of Fox Plaintiffs. (Attachments)(Chaitman, Helen) (Entered: 06/27/2014)
06/30/2014	53	Letter (related document(s)52) filed by Marcy R. Harris on behalf of Picower Defendants. (Harris, Marcy) (Entered: 06/30/2014)
06/30/2014	54	Letter to Honorable Stuart M. Bernstein (related document(s)50, 51, 52) filed by Keith R. Murphy on behalf of the Trustee. (Murphy, Keith) (Entered: 06/30/2014)
07/02/2014	55	Memorandum Endorsed Order Signed On 7/1/2014. Re: The Court Declines To Schedule A Discovery Conference Or Provide The Relief Requested In The Letter. In Light Of The Responses Submitted By Counsel For The Trustee And The Discover Defendants, The Proposed Conference Would Serve No Purpose. Moreover, The Court Does Not Grant Substantive Relief Sought By Letter In The Absence Of Consent By The Affected Parties. The Foregoing Is Without Prejudice To The Fox Plaintiffs Right To Make Formal Application For The Relief They Seek In Accordance With Applicable Law And Rules (Greene, Chantel) (Entered: 07/02/2014)
07/02/2014	56	Order Signed On 7/1/2014. Re: Courts Memorandum Decision Granting Plaintiff's Motion for an Injunction and Denying Motion for a Stay and Cross-Motion to Dismiss, dated June 23, 2014, ECF No. 50 (the Decision) (Greene, Chantel) (Entered: 07/02/2014)
07/14/2014	61	Notice of Appeal (related document(s)50, 56) filed by Joshua Joseph Angel on behalf of Goldman Plaintiffs. (Attachments) (Angel, Joshua) (Entered: 07/14/2014)
07/14/2014	62	Notice of Appeal (related document(s)50, 56, 55) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Attachments)(Chaitman, Helen) (Entered: 07/14/2014)

<b>FILING DATE</b>	<b>ECF DOC #</b>	<b>DOCKET TEXT</b>
07/18/2014	63	Notice of Motion to Set Hearing filed by Helen Chaitman on behalf of Fox Plaintiffs. (Attachments)(Chaitman, Helen) (Entered: 07/18/2014)
07/18/2014	64	Application for FRBP 2004 Examination and other relief (related document(s)63) filed by Helen Chaitman on behalf of Fox Plaintiffs. (Chaitman, Helen) (Entered: 07/18/2014)
07/23/2014	65	Notice of Hearing (related document(s)64) filed by Helen Chaitman on behalf of Fox Plaintiffs. with hearing to be held on 9/18/2014 at 10:00 AM at Courtroom 723 (SMB) Objections due by 8/8/2014, (Chaitman, Helen) (Entered: 07/23/2014)

July 28, 2014

**BECKER & POLIAKOFF LLP**

By: /s/ Helen Davis Chaitman  
Helen Davis Chaitman  
Lance Gotthoffer  
Peter W. Smith  
Julie Gorchkova  
45 Broadway, 8th Floor  
New York, New York 10006  
(212) 599-3322

*Attorneys for the Fox Plaintiffs*